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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	GC Docket No. 92-52
Reexamination of the Policy	)	
Statement on Comparative	)	RM-7739, RM-7740, RM-7741
Broadcast Hearings	)	

COMMENTS OF CBS INC.

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## SUMMARY

A number of the traditional criteria employed by the Commission in the comparative hearing process have become outmoded, unnecessary or inappropriate in light of the dramatic changes in the communications marketplace. Among the modifications recommended by CBS Inc. are the following:

(1) Elimination of the comparative preference for ownership participation in day-to-day station management.

There is no longer any basis for presuming that an owner-manager will provide superior service to the public than will a trained, experienced professional manager.

(2) Elimination of the comparative preference for diversification of ownership (i.e., the comparative disadvantage for applicants who own other broadcast stations). Diversification of ownership has been viewed by the Commission as a means of promoting diversity of programming and economic competition. In light of the tremendous profusion of radio and television outlets, the flourishing of non-broadcast competitors (e.g., cable, VCR's), and the decline of network and group owner shares of audience and advertising, these concerns are greatly reduced. Indeed, the Commission has increasingly recognized that group ownership can provide substantial benefits to the public through cost efficiencies, greater capital resources,

broadcast experience, and proven commitment to news and public affairs programming and charitable and civic activities. In these circumstances, it is no longer necessary or appropriate to impose an automatic comparative disadvantage based on prior station ownership, so long as the applicant is within the Commission's national and local ownership limits.

(3) Modification of the minority ownership preference.

To qualify for a comparative preference for minority ownership, applicants should demonstrate an actual minority ownership interest at least equal to that required under the Commission's existing distress sale and tax certificate policies.

(4) Elimination of the local residence preference. There is no longer any basis for presuming that the residence of a station owner in the broadcast market necessarily provides any significant benefit in public service or in attention to local needs, concerns, or interests.

(5) Elimination of any preference for proposed program service; retention of the preference for past broadcast record. Proposed program service consists of mere "paper promises," and should not be considered for competitive enhancement. However, a demonstrated record of unusually good service, in the form of news, public affairs programming, PSA's, and civic activities, furnishes a concrete basis for comparative preference.

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COMMENTS OF CBS INC.

In its Notice of Proposed Rulemaking in the above docket ("Notice"), the Commission has initiated a comprehensive review of the criteria employed in selecting between competing applicants for new broadcast facilities.

CBS Inc. ("CBS") believes that a review of the comparative criteria is well-merited, given the dramatic changes in the broadcast industry and FCC regulations over the past 25 years. We agree with the Commission that various of these criteria have become outmoded, unnecessary or irrelevant and should be eliminated or modified accordingly. As the Commission observes, changes in these criteria are appropriate not only in connection with comparative hearings on applications for new facilities, but also because of their potential impact on comparative renewal proceedings. See Notice at ¶ 4 n.l. Thus, the changes we recommend below -- including the elimination of the comparative enhancements

for ownership-management integration, diversification, and local residence -- should apply as well in the context of comparative renewals when the licensee has not received a renewal expectancy. We urge the Commission either to so hold in the context of this proceeding, or to proceed with its long-dormant inquiry into comparative renewal criteria in Docket 81-742.

We now discuss several of the comparative criteria addressed by the Commission in its Notice.

1. Ownership/Management Integration

In its recent decision in Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992), the D.C. Circuit directed the Commission to reexamine its continued application of the integration preference -- that is, the enhancement credit awarded to applicants who propose full-time ownership participation in station operations. The Court questioned the continuing validity of the integration preference and ordered the Commission to consider the "serious arguments" against its retention. Id. at 880.

We believe that, for the reasons identified by the Court, the Commission should eliminate the integration preference entirely.

The underlying premise of the preference -- that an integration of ownership and management can be presumed to offer superior public service -- is itself highly suspect. As the Court observed, "[t]he Commission has never explained...why an owner/manager will be more sensitive to community needs than an owner who hires a professional manager." Id. at 879 (emphasis in original). This is particularly true given the current state of the industry, in which the demands of a highly competitive marketplace and rapidly evolving technology have heightened the importance of experienced, professional station managers. The business of operating a successful broadcast station has become so complex, and so dependent on sophisticated programming, marketing, and technological capabilities, that professional management would appear to be a far more likely predictor of quality service to the community than a pledge of ownership/management integration. At the very least, there is today no basis for presuming that integration of ownership and management in itself provides any significant benefit to the community.

Moreover, as discussed by the D.C. Circuit, recent changes in FCC regulatory policy have rendered the integration preference virtually meaningless as a forecast even of a continuing significant ownership role in management. Under the Commission's so-called Anax doctrine, see Anax

Broadcasting, Inc., 87 F.C.C.2d 483, 488 (1981), passive owners are not counted in considering a claim for integration preference credit, so that "an applicant [can] receive 100% credit for integration of ownership into management even when...only a fraction of total ownership was actually represented in management." Bechtel v. FCC. 957 F.2d at 879-80. In addition, the Commission now permits a new licensee to sell a station without a hearing after only a year. Therefore, "an applicant largely financed by passive investors...could qualify for full integration credit...and then, after only a year, turn around and sell it to anyone without regard to the buyer's 'integration' or lack thereof." Id. at 880.

As the D.C. Circuit observed, "[w]hatever the original rationale supporting the integration criterion, these two regulatory changes would, therefore, appear to eviscerate it." Id. There is no basis in the public interest for maintaining this artificial and arbitrary preference for ownership/management integration, and it should be eliminated.

## 2. Diversification

For years, the Commission has mechanically awarded a comparative preference to an applicant who owns no other broadcast properties. In light of the profound changes in

the radio and television marketplaces, this preference is no longer justified or appropriate. Indeed, it may in many cases operate to disserve the public by disadvantaging a group owner applicant whose superior resources, broadcast experience, and commitment to news, public affairs programming, and civic involvement would better serve the community.

We will not here review the statistics which document the dramatic transformation in the number and competitiveness of television and radio outlets and program sources over the past 25 years. The Commission itself has in recent proceedings repeatedly described the explosive growth in television and radio stations; the rise of cable, VCR's, and other alternative programming sources; the fragmenting of audience and advertiser shares; and the decline of network and group broadcasting power. See, e.g., Deregulation of Radio 84 F.C.C.2d 968 (1981); Deregulation of Commercial TV Stations, 98 F.C.C.2d 1076 (1984); Fairness Report, 102 F.C.C.2d 143 (1985); Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996 (1991) (OPP Working Paper No. 26); Revision of Radio Rules and Policies, 70 R.R.2d 903 (April 14, 1992). The Commission has recognized that these changes have resulted in a highly competitive marketplace in which concerns about program diversity and concentration of broadcast economic power have been greatly reduced. Id.

At the same time, the Commission has recognized that group ownership of stations can affirmatively promote the public interest by enhancing program diversity, economic competition, and community service. Group ownership permits stations to realize various economies and efficiencies by combining administrative, sales, promotion, production and other functions. Successful group owners also tend to provide additional capital resources, expertise, and skills. The result, as the Commission has found, is generally the dedication of greater resources for programming, including news and public affairs, and for PSA's and other charitable and civic activities. See Multiple Ownership, 100 F.C.C.2d 17, 38 (1984), modified, 100 F.C.C.2d 77 (1984). As the Commission observed in its recent Report relaxing radio ownership rules, undue restraints on group ownership

"may actually hamper competition and diversity by making it unnecessarily difficult for stations to compete in today's thriving marketplace. By artificially denying stations efficiencies that could be realized...ownership restrictions increase the costs of doing business at a time when cost-savings may well be critical to survival...Significantly, cost savings stemming from joint operation are likely to be invested in capital improvements and better programming that will inure to the benefit of the... public."

70 R.R.2d at 913 In addition, the Commission concluded that relaxation of ownership restraints

"may actually enhance viewpoint diversity. Evidence adduced in this and earlier proceedings indicates that greater consolidation could increase the variety of programming available to the public, including local news and public affairs programming....[C]ommonly owned stations, on average, offer more public service programming....[G]roup-owned stations take editorial positions and engage in basic reporting and coverage decisions on an autonomous basis."

Id. See also Multiple Ownership, 100 F.C.C.2d at 20.

The Commission's recent proposal to relax television ownership restrictions reflects similar judgments regarding the video marketplace. See News Release, MM Docket 91-221 (May 14, 1992). See generally Broadcast Television in a Multichannel Marketplace, supra; Multiple Ownership, 100 F.C.C.2d at 44-45.

Diversification of ownership is not a goal in itself; to the contrary, diversification has long been encouraged by the Commission "simply as a means to achieve the public interest goal of promoting diversity of viewpoints [and the] complementary goal of promoting economic competition." One-to-a-Market Order, 4 FCC Rcd 1741, 1743 (1989). To the extent that restrictions on ownership are unnecessary to achieve these ends, or are in fact counterproductive, they have no public interest basis, as the Commission has recognized in relaxing or proposing to relax its limitations on national station ownership and on station ownership within individual markets.

For all of these reasons, there is no longer a valid reason for assessing an automatic comparative disadvantage to a competing applicant based on its ownership of additional broadcast stations, so long as its ownership is within the Commission's national and local ownership limits.

### 3. Minority Preference

In the past, minority ownership has been considered in conjunction with the ownership/management integration criterion. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997, 3005 (1990). Accordingly, in proposing to eliminate the integration criterion, the Commission's Notice suggests that minority ownership be treated as a separate comparative factor. Notice at ¶¶ 22-24.

We have outlined above our view that the Commission should eliminate the comparative preference for ownership/management integration. We agree that, in retaining a minority ownership preference (as currently mandated by Congress), the Commission should do so as an independent standard. However, the Commission should modify its analysis of minority interests to ensure that the degree of minority ownership is indeed meaningful. We recommend that the Commission adopt standards as least as

rigorous as those it uses in assessing eligibility for minority preference under the distress sale and tax certificate policies. That is, a minority-owned enterprise should be defined as follows for the purposes of comparative hearings, as in other areas:

(i) if the applicant is a corporation, minority interests must own a 50 percent interest or be controlling, or

(ii) if the applicant is a limited partnership, the general partner or partners must be minority group members who together have at least a 20 percent equity share, and the limited partners must exercise no managerial control over the station's operations.

See Minority Ownership in Broadcasting 92 F.C.C.2d 849 (1982); Minority Ownership of Broadcasting Facilities, 69 F.C.C.2d 1591 (1978).\*/

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\*/ We note that a proposal that the Commission require at least a 20 percent holding by minority general partners in a limited partnership to qualify for the comparative enhancement was supported in 1990 by the NAACP and the Congressional Black Caucus, among others, as a way for the Commission to "eliminate abuses of the Anax doctrine." Comparative Hearing Process, 6 FCC Rcd 157, 161-62 (1990).

We do not here address the issue of a gender preference in light of the decision of the U.S. Court of Appeals in Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992).

#### 4. Local Residence

The Commission should eliminate its comparative preference for applicants who reside in the broadcast market. Just as the integration of ownership and management functions no longer should be presumed to provide a significant public benefit, neither should the local residence of the owner.

As discussed above, and as the Commission has repeatedly recognized, group ownership of stations can offer substantial benefits, including experience and expertise, greater financial and technical resources, proven commitment to public service, and opportunities for cost efficiencies. Group ownership does not necessarily imply any diminution of attention to local needs, concerns, and tastes; to the contrary, the greater resources available from a group owner can enable station management to serve the local community more effectively. Thus, as the Commission has recognized, group-owned stations have tended to do "a superior job of responding to viewer demand for news." Multiple Ownership, 100 F.C.C.2d at 31. More important than the residence of the owner is the skill and commitment that the owner and professional local station management bring to identifying and serving local concerns and interests. In today's sophisticated, complex, and demanding communications world, there is no reason to presume that a local owner can provide better service to the community than an experienced,

committed group owner, working with professional local managers and staff.

#### 5. Proposed Program Service and Past Broadcast Record

CBS believes that the Commission should not grant comparative preference for an applicant's proposed program service. The Commission correctly questions the probative value of "paper proposals" regarding a licensee's intended programming, Notice at ¶ 16, particularly in light of the Commission's appropriate disinclination to review a station's changes in programming and formats. See FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981).

However, as opposed to promises about future programming, a record of past public service on the part of a licensee offers a concrete and legitimate ground for a comparative preference in an application for a new broadcast license. An applicant should receive credit for a proven record at other stations of "unusually good" service to the community -- i.e., a demonstrated commitment to news and public affairs programming, PSA's, and charitable or civic activities.

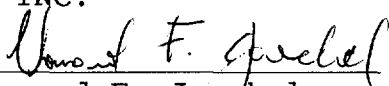
## CONCLUSION

For the reasons stated above, CBS urges the Commission to eliminate the comparative enhancement preferences for integration, diversification, proposed broadcast service, and local residence. We further recommend that the Commission eliminate the Anax doctrine and modify the definition of minority ownership for enhancement purposes to conform with the definitions employed in connection with its existing distress sale and tax certificate policies. We also support retention of the enhancement credit for unusually good past broadcast record. We express no views here as to the other matters addressed in the Notice.

Respectfully submitted,

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